LIM TENG HONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) April 26, 1956]

[Ipoh — Criminal Appeal No. 24 of 1956]

Road Traffic — Road Transport Proclamation — Motor Vehicles Third Party Risks Regulations, reg. 3(1) and (2) — Disqualification — Period of disqualification.

The appellant in this case was convicted of driving a motor car without there being in force a Third Party Insurance Policy in contravention of regulation 3(1) of the Motor Vehicles Third Party Risks Regulations. He was fined $250 and disqualified from holding a driving licence for a period of two years. He appealed against the disqualification.

Held: (1) by regulation 3(2) of the Motor Vehicles Third Party Risks Regulations, disqualification for 12 months follows automatically on a conviction and there is no power in the Court to make any order of any sort; (2) therefore the order of disqualification in this case must be set aside.

MAGISTRATE'S CRIMINAL APPEAL.

M. S. Mahendran for the appellant.

A. P. Jack (Federal Counsel) for the respondent.

Thomson J. : —The appellant in this case was convicted in the Magistrate's Court at Ipoh of driving a motor vehicle without there being in force a Third Party Insurance Policy in contravention of Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations made by the Commissioner for Road Transport under the Road Transport Proclamation. He was fined $250 and disqualified from holding a driving licence for a period of two years.

He appealed against so much of his sentence as consisted in disqualification from holding a driving licence for two years. I allowed the appeal and set aside the order of disqualification.

Regulation 3(1) of the Regulations in question provides that it shall not be lawful for any person to use a motor vehicle unless there is a Third Party Insurance Policy in force in respect of such user and sub-regulation (2) provides that any person acting in contravention of the Regulation shall be liable to fine or imprisonment and

"Shall (unless the Court for special reasons. thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction".

I do not pretend to speak with any confidence as to the confused mass of B.M.A. Proclamations, Emergency Regulations and Regulations made under B.M.A. Proclamations which constitute the Road Traffic law of this unfortunate country. But Regulation 3(2) says that the disqualification which it attaches to a conviction is to be "without prejudice to the power of the Court to order a longer period of disqualification" and I have been unable to discover, nor has the Deputy Public Prosecutor been able to shew me, anything that gives the Court any power to disqualify on conviction for such an offence under the Regulation. It seems to me, and again I speak without certainty, that no such power exists. Under the Regulation disqualification for twelve months follows automatically on a conviction and I am satisfied that in the absence of anything outside the four corners of the Regulation there is no power in the Court to make any order of any sort. It was for that reason that I set aside the order disqualifying the present appellant for two years.

I think I should point out that Regulation 3(2) is the same as section 35(2) of the English Road Traffic Act, 1930. Under that Act, however, the words "without prejudice to the power of the Court to order a longer period of disqualification" clearly refer to the power given to the Court by section 6 of the Act which provides that any Court before which a person is convicted of any criminal offence in connection with the driving of a motor vehicle the Court shall order him to be disqualified for holding a licence for such period as the Court thinks fit. I can, however, find nothing corresponding to section 6 of the English Act in our legislation.

Appeal allowed.

PUBLIC PROSECUTOR v. ABDUL MANAP

[O. Cr. J. (Briggs J.) December 11, 1952]

[K. L. — Criminal Trial No. 64 of 1952]

Penal Code, ss. 96 & 99 — Private defence — Retaliation in excess of private defence.

The accused in this case was charged with voluntarily causing grievous hurt by stabbing the complainant. The fact that he stabbed the complainant was never denied and the only contested issue was how far his offence might be annulled or diminished either because there was a proper exercise of the right of private defence or because there was provocation. The facts were that the parties had a dispute about some rent payable by the complainant for a padi field. Both parties had lost their tempers, and the accused, a much smaller man, struck the complainant. It was not suggested that the blow was a serious one. The complainant in retaliation throttled and severely assaulted the accused and the latter had no opportunity to escape. He stabbed the complainant.

Held: (1) notwithstanding that the accused struck the first blow and therefore the complainant was entitled to exercise his right of private defence, the complainant's retaliation was of such a violent nature that it exceeded private defence; (2) the accused in his turn was entitled to exercise his right of private defence, and, on the facts, his exercise thereof was not excessive.

CRIMINAL TRIAL.

B. Sheldon (Federal Counsel) for the Public Prosecutor.

Accused in person.

Briggs J. (delivering oral judgment) : —I have found this a difficult case and my judgment is being recorded in view of possible future need.

The accused was charged with voluntarily causing grievous hurt by stabbing the complainant. The fact that he stabbed him was never denied and the only contested issue is how far his offence may be annulled or diminished either because there was a proper exercise of the right of private defence or because there was provocation. It is clear that the parties had a dispute about some rent payable by the complainant for a padi field. On the complainant's own showing he behaved in a manner which must, to say the least, have been extremely exasperating to the accused. It seems clear that both parties had lost their tempers; they both did so again in Court before me. Incensed by something which the complainant has said, the accused struck him. It was not suggested that the blow was a serious one, but it was undoubtedly a blow with the fist. At this stage it is necessary to consider the respective physiques of the parties. The complainant, in his evidence, describes it quite clearly in this way : That the accused is a very small man, elderly and of poor physique, while he, the complainant, is tall, young and normally strong. He agreed that he could kill the accused with his hands alone if he wanted. The complainant had no weapon, but the accused had, either on his person or in immediate reach, a small dagger. On being struck by the accused, the complainant seized him with one hand by his baju below the collar and hit him with his fist three times. That was his first account of it, but he also said "I do not remember how often I punched him", so it may well have been much more. The question how his grip on the accused's clothes affected the accused is best understood by the evidence of the accused's son, Isahak, who though only nine was intelligent and in my opinion was a witness of truth. He said that the complainant had caught the accused by the neck and was throttling him. Later, in answer to me, he said "When I saw the complainant throttling my father, I was frightened. I did not know what would happen". I then asked "If your father had not stabbed him what do you think would have happened?" and he replied "My father would die; I mean the complainant would have killed him". It is not necessary to suppose that his assumption was correct in fact; but that he could, as I am sure he did, make that assumption, shows that the situation was at any rate substantially serious for the accused. At that stage, the accused took the dagger and stabbed the complainant once in the chest.

Now, on these facts I am of opinion, first, that although the accused struck the first blow and therefore the complainant was himself entitled to exercise the right of private defence, the retaliation which the complainant in fact made for that single blow was on a much larger scale and much more serious that would possibly be justified in the circumstances. It is true that in law the complainant was entitled to use enough force to prevent any repetition of the blow by the accused; but in fact, having regard to the disparity of physique, any question of really defending himself did not seriously arise, and I am convinced that his real frame of mind was that, the accused having had the nerve to strike him, he would teach the accused a real lesson. That is not private defence. It is true that one does not "weigh in golden scales" the quantum of force which is or is not permitted, but the frame of mind in which the force is applied is of importance. I am entitled to infer what that frame of mind was from the evidence, and I do not consider that the complainant was acting properly within the limits of private defence. This, of course, is fundamental, for if he was acting properly within those limits he was not committing any offence against the accused, and therefore no right of private defence in the accused would ever arise. I believe, however, that he did commit an offence against the accused and that the right of private defence did arise in the accused. Now, if this is so, what degree of force was necessary to be used and has the accused exceeded it? The accused was being throttled. He was held by a much larger and more powerful assailant, and there is no reason to suppose that he had any way of getting away or escaping; meanwhile he was being subjected to blows of the fist, and there seems every reason to suppose that the assault on him would have continued, perhaps with increasing gravity, unless he took immediate action. Again having regard to the disparity of the physique, I cannot conceive that any action other than that which he took would have been effective to enable him to escape from the predicament from which he found himself.

As the complainant did not die no other considerations than this arise on the question of quantum of force used. Where there is no death the only issue is : Was more force used than was necessary? — and I am clearly of opinion that it was not. The fact that he almost killed the complainant or might have killed the complainant is really beside the point. If you stab a man at all you expect to do him serious damage, but serious damage was the only way by which the attack of the complainant could be stopped. There is no reason whatever to suppose that the accused was carrying the weapon with a view to this particular encounter. It is common knowledge that many people do carry such weapons, although it may be a very undesirable practice. Now, in these circumstances the

learned Deputy contends that the defence must be called on, because on this issue of private defence the onus is on him. I do not think that that follows at all. It is true that in the case of private defence, as in every other case of a general exception to the Penal Code, the burden of establishing the defence lies on the defendant, but it does not at all follow that he need do so out of his own mouth. It is clearly expressed in *Ratanlal* on the "Law of Crimes", 17th edition at page 206, that, although it is for the defence to show the existence of the right of private defence and its proper exercise, this may well be shown by pointing to facts established by the prosecution evidence, and that it need not at all be necessary to call on the accused for the evidence of himself or his witnesses. Although part of the defence depends on the mental attitude, about which the accused could perhaps give more accurate evidence than anyone else, the Court is not only entitled but is under a duty to draw inferences as to the accused's mental attitude from the prosecution's case; and if on consideration of the whole of the prosecution evidence it appears more probable than not that the accused acted properly in exercise of his right of private defence, the Court has no alternative but to acquit him without calling on him for his defence. It may be that if he gave evidence the matter would be much more clearly and satisfactorily disposed of, in the sense that doubtful issues of fact might have cleared up. I am, however, after considerable thought, of opinion that the evidence given for the prosecution makes it appear to me much more probable than not that the accused did act in private defence and did not do so excessively. The accused is accordingly acquitted and discharged.

Accused acquitted and discharged

In re A TAX-PAYER (No. 3)

[A. C. J. (Murray-Aynsley C.J.) August 4, 1955]

[Singapore — District Court Appeal No. 9 of 1955]

Income Tax Ordinance, 1947, ss. 10(1)(a) and (b), 14(1) and 19 — Deductions for depreciation, insurance and road tax — Taxpayer's wife taking employment.

In this case the wife of the taxpayer was in receipt of a salary as an Education Officer, an employment within the meaning of s. 10(1)(b) of the Income Tax Ordinance. When she took this employment it was found necessary to get a second car, which was used for other purposes besides those connected with her employment, and also to hire a piano. The Income Tax Board of Review allowed deductions for depreciation, insurance and road tax in respect of the car, and in respect of the piano they allowed certain deductions. The Crown appealed.

Held: (1) in this case there was evidence to justify the Board's finding in respect of the piano; (2) as the income of the taxpayer's wife is assessable under s. 10(1)(b) nothing could be claimed for depreciation of the car under s. 19 because that section only refers to income assessable under s. 10(1)(a) from the carrying on of a trade, profession or business. It was not a deduction under s. 14(1) because it was not an outgoing or expense; (3) expenses of getting from home to place of employment cannot be deducted. There is no provision in the Income Tax Ordinance which entitles the taxpayer to apportion the cost of insurance or road tax.

INCOME TAX APPEAL.

G. S. Hill (Crown Counsel) for the appellant.

Respondent in person.

Murray-Aynsley C.J.: — In this case the wife of the taxpayer was in receipt of a salary as an Education Officer. The Commissioners have found, and I think they must have found, that this is an employment within the meaning of section 10(1)(b) of the Ordinance. When the wife took up this employment it was found necessary to get a second car. It was also necessary to hire a piano. In respect of these the Commissioners have allowed certain deductions. The Crown appeals.

As regards the piano, I think that there is evidence on which the findings of the Commissioners can be justified and the appeal as regards these deductions is dismissed.

As regards the car, the Commissioners allowed deductions for depreciation, insurance and road tax.

As regards depreciation, it is clear that as income of the wife is assessable under section 10(1)(b) nothing can be claimed for depreciation under section 19 because that section only refers to income assessable under section 10(1)(a) from the carrying on of a trade, profession or business. It is not a deduction under section 14(1) because it is not an outgoing or expense.

As regards the other deductions, it appears that the car was used for other purposes besides those connected with the employment of the taxpayer's wife. Therefore, the sums paid for insurance and road tax were not wholly and exclusively incurred in the production of the income. Further, expenses of getting from home to place of employment cannot be deducted. The only part of the expense of the car that comes within section 14 is for goings other than those from home to place of employment made in the course of duty by the taxpayer's wife. For these mileage was paid. If the taxpayer wants the expenses to be brought into account for tax purposes it can only be on the basis of bringing into account anything received in this way. If the expenses are more than what was received by way of allowances then there may be a deduction. I do not think that strictly speaking there is anything in